



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2014-0916; FRL-9930-46-Region-8]

**Approval and Promulgation of Air Quality Implementation Plans;
South Dakota; Revisions to South Dakota Administrative Code**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve State Implementation Plan (SIP) revisions submitted by the State of South Dakota on July 29, 2013. This SIP submission revises the Administrative Rules of South Dakota (ARSD) Article 74:36 - Air Pollution Control Program. These revisions include grammatical changes, renumbering, revisions to the date of incorporation by reference of the federal regulations referenced throughout ARSD Article 74:36, and removal of obsolete language regarding variance provisions and clean units. A cross-walk table, which details each individual rule revision in Article 74:36, and the actions EPA is proposing on those revisions, is included in the docket for this rulemaking. EPA is also proposing to clarify a final rule issued on January 29, 2015 pertaining to South Dakota's infrastructure SIP. This action is being taken in accordance with section 110 of the Clean Air Act (CAA).

DATES: Comments must be received on or before **[Insert date 30 days after publication in**

the Federal Register].

ADDRESSES: The EPA has established a docket for this action under Docket Identification Number EPA-R08-OAR-2014-0916. All documents in the docket are listed on the <http://www.regulations.gov> web site. Although listed in the index, some information may not be publicly available, *i.e.*, Confidential Business Information or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in the hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at EPA Region 8, Office of Partnership and Regulatory Assistance, Air Program, 1595 Wynkoop Street, Denver, Colorado, 80202-1129. The EPA requests that you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. The Regional Office's official hours of business are Monday through Friday, 8:00 a.m. - 4:00 p.m., excluding federal holidays. An electronic copy of the state's SIP compilation is also available at <http://www.epa.gov/region8/air/sip.html>.

FOR FURTHER INFORMATION CONTACT: Adam Clark, Air Program, U.S. Environmental Protection Agency, Region 8, Mailcode 8P-AR, 1595 Wynkoop, Denver, Colorado 80202-1129, (303) 312-7104, clark.adam@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

What should I consider as I prepare my comments for EPA?

1. Submitting Confidential Business Information (CBI). Do not submit CBI to EPA through www.regulations.gov or email. Clearly mark the part or all of the information that you claim to

be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. Tips for Preparing Your Comments. When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, Federal Register date and page number).
- Follow directions - The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

II. Background

South Dakota's June 29, 2013, submittal covers the following rule changes: (1) Removal of obsolete language regarding variance provisions and clean units, and renumbering to reflect the deletions; and (2) Revisions to the date of federal regulations referenced throughout ARSD Article 74:36 to July 1, 2012. A cross-walk table, which identifies the proposed rule revisions in Article 74:36 specifically, and the action EPA is proposing to take on those revisions, is included in the docket for this rulemaking.

South Dakota's June 29, 2013 submittal also requests EPA approval of rule revisions for provisions that are not required to be included in SIPs under section 110 of the Clean Air Act (CAA), most notably additions to the State's New Source Performance Standards (NSPS) and National Emissions Standards for Hazardous Air Pollutants (NESHAPs). These revisions, which EPA is not proposing action on, are outlined in the cross-walk table located in the docket for this rulemaking.

III. What Action is EPA Taking?

EPA is proposing to approve most revisions of South Dakota's July 29, 2013 submittal as outlined in Section II. of this rulemaking that were not acted on previously. An overview of EPA's proposed approval of each section is described below. The excepted revisions, on which EPA will not take action, are also described below.

74:36:01:01 (Definitions)

EPA is proposing to approve all changes in this section as outlined in the crosswalk table (see docket). These changes specifically remove the term "variance" previously included in the definitions of "existing source" and "new source," and removes the definition of "variance." The

removal of the variance will strengthen the environmental protection provided by the SIP, and therefore EPA proposes to approve these changes. EPA is also proposing to approve all remaining changes in this section, which update the date of incorporation by reference of the federal regulations to July 1, 2012.

74:36:02 (Ambient Air Quality)

EPA is proposing to approve all changes in this section, which update the date of incorporation by reference of the federal regulations to July 1, 2012.

74:36:04 (Operating Permits for Minor Sources)

EPA is proposing to approve all changes in this section, which remove citations to repealed provisions of South Dakota's legal code regarding variances from the General Authorities and Implemented Laws provided. It also updates the date of incorporation by reference of the federal regulations to July 1, 2012.

74:36:05 (Operating Permits for Part 70 Sources)

EPA is proposing to approve the changes in this section, which update the date of incorporation by reference of the federal regulations to July 1, 2012 and remove citations to repealed provisions of South Dakota's legal code regarding variances from the General Authorities and Implemented Laws provided.

74:36:07 (New Source Performance Standards)

EPA is not taking action on this section because NSPS are not required to be included in a SIP per section 110 of the CAA.

74:36:08 (National Emission Standards for Hazardous Air Pollutants)

EPA is not taking action on this section because NESHAPs are not required to be

included in a SIP per section 110 of the CAA.

74:36:09 (Prevention of Significant Deterioration)

EPA is not taking action on this section of South Dakota's July 29, 2013 submittal because it was acted upon by EPA in a final rulemaking dated January 29, 2015. (80 FR 4799)

74:36:10 (New Source Review)

EPA is proposing to approve all changes in this section that were not acted upon in an EPA final rule issued on June 27, 2014, with one exception. The provisions that EPA is proposing to act upon in this rulemaking are 74:36:10:09 and 74:36:10:10. These provisions remove obsolete language regarding clean units. EPA is not taking action on 74:36:10:06, which proposes to add PM_{2.5} to the "Pollutant and Significant Levels" table and to renumber other pollutants in the table. On January 22, 2013, the United States Court of Appeals for the District of Columbia vacated and remanded portions of EPA's 2010 PM_{2.5} Increment Rule (75 FR 64864) addressing the Significant Impact Levels (SILs) for PM_{2.5}. On December 9, 2013, EPA amended its regulations to remove the PM_{2.5} SILs (78 FR 73698). Therefore, South Dakota's incorporation of the PM_{2.5} SILs into its SIP no longer reflects the current regulations.

74:36:11 (Performance Testing)

EPA is proposing to approve changes in this section, which update the date of incorporation by reference of the federal regulations to July 1, 2012.

74:36:12 (Control of Visible Emissions)

EPA is proposing to approve the changes to 74:36:12:01 and 74:36:12:03 in the submittal, which update the date of incorporation by reference of the federal regulations to July 1, 2012 and update the General Authorities and Laws Implemented. EPA is not taking action on

the language change in 74:36:12:02(3). On February 22, 2013, EPA (among other things) made a finding of substantial inadequacy and issued a SIP call for certain provisions related to start-up, shutdown, and malfunction in current SIPs for specific states. For South Dakota the affected provision is 74:36:12:02(3). EPA is not taking action on this provision, because it will be addressed in the proposed SIP call.

74:36:13 (Continuous Emissions Monitoring)

EPA is proposing to approve changes in this section, which update the date of incorporation by reference of the federal regulations to July 1, 2012.

74:36:16 (Acid Rain Program)

EPA is not taking action on this section because the Acid Rain Program is not required to be included in a SIP per section 110 of the CAA.

74:36:18 (Regulations for State Facilities in the Rapid City Area)

EPA is proposing to approve changes in this section, which update the date of incorporation by reference of the federal regulations for the visible emission test method to EPA Method 9 in 40 CFR part 60, Appendix A to July 1, 2012 and delete references to repealed provisions of the South Dakota Legal Code regarding variances.

74:36:20 (Construction Permits for New Sources or Modifications)

EPA is proposing to approve the changes in this section, which update the date of incorporation by reference of the federal regulations to July 1, 2012 and delete references to repealed provisions of the South Dakota Legal Code regarding variances. It also includes a change to 74:36:20:05 to ensure air pollution dispersion modeling used to determine compliance with that requirement is performed in accordance with 40 CFR part 51, Appendix W to July 1,

2012.

74:36:21 (Regional Haze Program)

EPA is proposing to approve changes in this section, which update the date of incorporation by reference of the federal regulations to July 1, 2012.

IV. Proposed Clarification of January 29, 2015 Final Action

Under CAA sections 110(a)(1) and (2), states are required to submit infrastructure SIPs to ensure their SIPs provide for implementation, maintenance, and enforcement of the NAAQS. As noted, on January 29, 2015, EPA took final action on the infrastructure submittals which addressed several different NAAQS from the State of South Dakota. (80 FR 4799). As part of the January 29, 2015 action, EPA approved South Dakota's 1997 PM_{2.5} NAAQS interstate transport infrastructure sub-element (CAA section 110(a)(2)(D)(i)(II)). However, EPA had already approved this sub-element in a final rulemaking on May 8, 2008. (73 FR 26019, effective July 7, 2008). Therefore, in this action EPA is proposing to clarify that no action was required on this sub-element for this NAAQS in the January 29, 2015 approval of CAA section 110(a)(2)(D)(i)(II) for the 1997 PM_{2.5} NAAQS and the effective date of approval remains July 7, 2008.

V. Summary of Proposed Action

In this proposed rulemaking, we are proposing approval of most remaining portions of South Dakota's July 29, 2013 submittal as outlined in section III. above and in the crosswalk table located in the docket. We are proposing not to take action on certain portions of this submittal as described in section III. Finally, we are proposing to clarify our January 29, 2015 final action (80 FR 4799) regarding the effective date of approval for South Dakota's SIP

regarding CAA section 110(a)(2)(D)(i)(II) for the 1997 PM_{2.5} NAAQS.

VI. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the rules in ARSD 74:36 submitted by South Dakota for action which are identified within this notice of proposed rulemaking. The EPA has made, and will continue to make, these documents generally available electronically through www.regulations.gov and/or in hard copy at the appropriate EPA office (see the ADDRESSES section of this rule's preamble for more information).

VII. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state actions, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely approves state law provisions as meeting federal requirements and does not propose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not proposed to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive

Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq*

Dated: June 25, 2015.

Debra H. Thomas,
Acting Regional Administrator,
Region 8.

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